

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2713/2022

Sau. Rupali w/o Amarkumar Ingle
...Versus...
Sunil s/o Shriram Thakare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.G. Sarda, Advocate for petitioner
Shri R.D. Bhuibhar, Advocate for respondent no.1
Shri N.R. Rode, AGP for respondent nos.2 and 3
Shri S.O. Umredkar, Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/08/2022

1. Heard Mr. M.G. Sarda, learned counsel for the petitioner, Mr. R.D. Bhuibhar, learned counsel for the respondent no.1, Mr. N.R. Rode, learned Assistant Government Pleader for the respondent nos.2 and 3 and Mr. S.O. Umredkar, learned counsel for the respondent no.4.

2. The petitioner, who is elected as Sarpanch on 9.2.2021 has been disqualified by the order of the learned Collector dated 27.1.2022 (pg.18) on the ground that the father-in-law of the petitioner has made an encroachment upon the piece and parcel of land identified as Property

No. 240, which admittedly is F-class land, i.e. land belonging to the Government. The Divisional Commissioner in appeal has confirmed the order by its order/judgment dated 9.5.2022 (page 31).

3. Mr. Sarda, learned counsel for the petitioner submits that there is no positive evidence on record to establish that the petitioner, had ever resided at property No. 240 or was ever in use of it. He submits that though there may be material on record to indicate that at one point of time, the father-in-law of the petitioner may have acquired right over the construction made, which is identified as property No. 240 and had transferred it in the year 2019 itself to one Ashish Choutmal, however, apart from that no material is brought on record to indicate that at any point of time the petitioner had ever resided in property no.240 either herself or along with her father-in-law.

4. It is contended that even the panchnama dated 11.9.2021 does not indicate that the petitioner was at any point of time in occupation of the property no.240, so also similar is the case with the report of the Tahisldar dated 23.11.2021 (pg 98). It is submitted that the petitioner was all throughout residing in property No.379, in respect of which a positive statement has been made in her written statement before the Collector (pg 57), which is on oath. It is therefore

submitted that since the petitioner was at no point of time in occupation of the property bearing no.240, the disqualification on the ground of Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1959 (for short, “the M.V.P. Act” hereinafter) cannot be attracted and both the authorities have clearly erred in this regard in rendering a finding to that effect.

5. Mr. Bhuihar, learned counsel for respondent no.1 vehemently opposes the petition and submits that there is material on record to indicate that the property was at one point of time owned by the father-in-law of the petitioner who was also occupying it. He invites my attention to the report of the learned Tahsildar dated 23.11.2021, which speaks of the position that in the spot inspection and local enquiry, it was found that property no. 240 had the lock of Gowardhan Baheti Ingle, the father-in-law of the petitioner and he was occupying the same. It is his contention that since this is a finding rendered, and there is no material on record to indicate that the petitioner is residing in property no.379, the necessary inference has to be drawn that the petitioner was residing in property no.240 and therefore had incurred the disqualification. He further submits that the petitioner ought to have placed material on record to indicate her occupation of property no. 379 and failure to do so, requires an adverse inference to be drawn against her. Reliance is placed upon *Janabai Vs. Additional Commissioner and Ors, AIR 2018 SC*

5068 and Bhagwat Vs. The Divisional commissioner, Amravati Division and Ors., 2019 (3) Mh.L.J. 691.

6. Mr. Patil, learned Assistant Government Pleader for the respondent nos.2 and 3 in addition to the above contention draws my attention to the averment in the petition in para 1 which says that since the marriage of the petitioner on 06.06.2014 she is residing at the address mentioned in the cause title of the petition in a joint family, thereby indicating that the petitioner was residing with her father-in-law in property no. 240 and accordingly supports the impugned order.

7. Mr. Umredkar, learned counsel for the respondent no.4 supports the stand of Mr. Bhuibhar, learned counsel for respondent no.1 as well as Shri Patil, learned Assistant Government Pleader for the respondent nos.2 and 3.

8. The petitioner was elected as sarpanch in the election held on 9.2.2021 to Kanheri Sarap Gram Panchayat. The respondent no.2 who lost the said election had filed an application under Section 14 (1) (j-3) of the M.V.P. Act to declare that the petitioner was disqualified on the ground that the father-in-law of the petitioner viz. Gowardhan Baheti Ingle had encroached upon property no. 240 admeasuring 28 x 30 = 840 sq.ft. which was recorded as Government property in the

Form-8 register for the said Gram Panchayat. The record indicates that the structure which is identified as property no.240 was acquired by Gowardhan Baheti Ingle under the unregistered document styled as “Imla Vikri Patra” dated 31.7.2015 (pg 48) under which he was placed in possession thereof. The record also indicates that the said Gowardhan Baheti Ingle by a document of transfer, which is unregistered, transferred the ownership of the Imla (structure) to one Ashish Bhaurao Chotmal on 4.1.2019 (pg. 52). The said Ashish Bhaurao Chotmal by an application dated 9.9.2019 applied for mutation of his name in property no. 240, which however came to be rejected on 29.9.2021 on the ground that the document was unregistered. The document dated 4.9.2019 indicates delivery of possession by Gowardhan Baheti Ingle in favour of Ashish Bhaurao Chotmal. Ashish Bhaurao Chotmal has filed an affidavit on record (pg. 107) sworn on 29.11.2021 stating that the property no. 240 is in his possession from 4.9.2019.

9. The property no. 240 was inspected by the Talathi Kanheri Sarap on 11.9.2021 in which it is stated that upon enquiry, it has been learnt that the property was of Gowardhan Baheti Ingle and was being occupied by him. The said inspection has been made in the presence of the Police Patil, Pimpalkhuta Shri B.V. Kshirsagar; Tulshiram Laxman Lothe, Shuddhodhan Sudam Ingle and Pankaj Mahadeo Shirsat. What

is material to note is that the panchanama does not indicate the names of the persons from whom such an enquiry has been made, nor does it indicate on what basis the information has been received that the said Gowardhan Baheti Ingle was residing there. Two of the panch witnesses Shuddhodhan Ingle and Pankaj Shirsat have filed affidavits before the Collector, sworn on 23.9.2021 (pg. 91 to 97) stating that when they visited property no.240 on 11.9.2021 at about 1.30 p.m., the property was locked from the outside and nobody was present there. The affidavit by Pankaj Shirsat states that at that time he had informed the Talathi Shri H.S. Bute that the property was occupied by Ashish Bhaurao Chotmal since 2019 and his name was also displayed on the wall beside the door and since he was residing on the backside of property no. 240, he was aware of this position. Shuddhodhan Sudam Ingle has also reiterated the position that the property no. 240 was being occupied by Ashish Bhaurao Chotmal and the panchnama prepared by Talathi Shri H.S. Bute was incorrect, as the same was not prepared in his presence, nor recorded in his presence and the Talathi stated that he would prepare it afterward and had taken their signatures on a piece of paper. It is, therefore, apparent that there is a dispute in regard to the veracity and genuineness of the contents of the panchnama. Moreover, the fact that the property was in occupation of Ashish Bhaurao Chotmal was within the knowledge of the Gram Panchayat, as the application for mutation of his name dated 19.9.2019 was

already pending with the Gram Panchayat. The report of the Tahsildar dated 23.11.2021 is not based upon any personal spot inspection, but is based upon the report of the Talathi and the report of the Block Development Officer dated 7.10.2021 (pg.41). The report of the Block Development Officer dated 7.10.2021 merely records transactions, one dated 31.7.2015 in favour of Gowardhan Baheti Ingle and the other dated 4.9.2019 in favour of Ashish Bhaurao Chotmal, on the basis of documents available in the Gram Panchayat record. It also indicates the receipt of the application dated 9.9.2019 by Ashish Bhaurao Chotmal for mutation of his name. What is material to note is that none of the reports, either of the Talathi or the BDO or the Tahsildar indicate that the petitioner was ever in occupation of property no.240 at any point of time whatsoever, rather they indicate a conflicting position regarding the occupation of property no.240 by Ashish Bhaurao Chotmal or Gowardhan Baheti Ingle. It is therefore apparent that there is no positive position on record or evidence to indicate that the petitioner was ever in occupation of the property in question. The impugned order also does not hold that the petitioner was ever in possession of property no. 240 at any point of time. They merely say that the property was recorded in the name of Gowardhan Baheti Ingle prior to 2019.

10. The dictum of Hon'ble Supreme Court in *Janabai*

(supra) is indicated by what is held in para 29 therein, which is an under :-

“29. We may note here with profit that the word ‘person’ as used in Section 14 (1) (j-3) is not to be so narrowly construed as a consequence of which the basic issue of “encroachment” in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the Panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision. Thus analysed, we are of the view that the decision in Sagar Pandurang Dhundare [AIR 2017 SC 5420] (supra) does not lay down the correct position of law and it is, accordingly, overruled.”

11. It would be therefore apparent that the disqualification under Section 14 (1) (j-3) of the M.V.P. Act

would be attracted if it is demonstrated that the petitioner, had at any point of time been in possession of property no.240 either individually or had shared it with her father-in-law Gowardhan Baheti Ingle. It is, however, clear that nothing is there on record to indicate that the petitioner had at any point of time shared the property no.240 with her father-in-law Gowardhan Baheti Ingle or that she was in the occupation of the same individually. Since an elected representative is being sought to be disqualified on the ground of encroachment under Section 14 (1) (j-3) of the M.P.V. Act, the same cannot be done on the basis of a presumption, however, strong it may be and there has to be a positive evidence on record to indicate that the person sought to be disqualified was at some point of time in possession of the encroached property or had shared the same with the person claimed to be in its occupation, which is what has been held by the Hon'ble Supreme Court in *Janabai* (supra). The material on record in the instant matter does not satisfy the requirement of Section 14 (1) (j-3) of the M.V.P. Act in light of the interpretation of the Hon'ble Supreme Court in *Janabai* (supra).

12. The next contention of the learned counsel for the respondent no.1 that there has to be a positive evidence on part of the petitioner to indicate that the petitioner was not occupying the encroached property or that she was occupying some other property has to be construed in light of the position

that it is the respondent no.1 who had come with a case that the petitioner was disqualified having not complied with the requirement of Section 14 (1) (j-3) of the M.V.P. Act. The burden therefore to establish the fulfillment of such requirement would rest with the person seeking disqualification and it is only when such burden is discharged, the same would shift upon the person sought to be disqualified. The record indicates that the respondent no.1 had failed to discharge that burden by bringing material on record, to indicate the occupation of property no. 240, by the petitioner any any point of time, as reports of neither the B.D.O or that of the Talathi indicate so. In the instant case, a positive statement is made by the petitioner in her reply (page 57) that she is residing in House no.379 along with her husband which was the ancestral property of her husband, in which her father-in-law Gowardhan Baheti Ingle, the brother-in-law Rupesh Gowardhan Ingle, mother-in-law Kantabai and her sister-in-law Shital Rupesh Ingle were residing, which position does not appear to be in dispute.

13. The contention of learned Assistant Government Pleader that the admission that the petitioner was residing in a joint family as occurring in para 1 of the petition has therefore to be construed in light of the averments in the written statement of the petitioner before the Collector (para 10/ page 67) is clearly misconceived as it has to be read in the

context of the address given in the cause title of the petition and not otherwise.

14. The observations by the learned Single Judge of this Court in ***Bhagwat*** (supra) were in the background of the factual position therein, in which, it was found that the residence certificate obtained by the petitioner from the Sarpanch of Gram Panchayat, Morgavhan was on 21.9.2017 on the basis of which certificate he had obtained other documents i.e. Adhar Card and Election Identity Card and it was also on the basis of this residence certificate that the petitioner therein had got his name included in the electoral roll of village Morgavhan and got elected in the Panchayat Election held on 9.10.2017 i.e. just about 18 days after procuring of the residence certificate on 21.9.2017 and it is in this factual background that it has been held that the petitioner should have demonstrated himself to be a resident of village Morgavhan, considering the time gap of his obtaining the residence certificate and the election. The factual position in the present matter is different inasmuch as there is no dispute that the petitioner is resident of Kanheri Sarap. The only question was whether the petitioner was at any point of time occupying property no. 240 so as to declare the petitioner to be disqualified under the provisions of Section 14 (1) (j-3) of the M.V.P. Act, in view of which, in my considered opinion the judgment in ***Bhagwat*** (supra) is distinguishable on facts.

15. The order of the Collector dated 27.1.2022 (page 18) merely relies upon the report of the Tahsildar Barshitakli, who was not a person, who had ever visited the spot and verified for himself the factuality of the position. The order of the Divisional Commissioner dated 9.5.2022 in one single paragraph (the last but one paragraph on page 33) in view of the entry of property no.240 in the name of Gowardhan Baheti Ingle, dismisses the revision, without considering the fact that there is apparent discord between the reports of the Talathi, the Block Development Officer and the Tahsildar and that there is no positive evidence on record to indicate the occupation of property no. 240 by the present petitioner either individually or on a sharing basis at any point of time whatsoever, considering which position, it is apparent that the requirement of Section 14 (1) (j-3) of the M.V.P. Act as clarified by the Hon'ble Supreme Court in *Janabai* (supra) has not been satisfied, in view of which, the order dated 27.1.2022 of the learned Collector as well as the order dated 9.5.2022 of the learned Divisional Commissioner cannot be sustained and the same are therefore quashed and set aside. The application filed by the respondent no.1 under Section 14 (1) (j-3) of the M.V.P. Act is hereby dismissed.

16. The writ petition is accordingly allowed in the above terms. No order as to costs.

JUDGE

Digitally sign by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 30.08.2022 16:44

Rvjalit